IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 978 OF 2004

SMT. SARVARI ANSARI)
(Mother of the detenu)residing at Abdul
Rasool Chawl, Behind Nagina Bakery)
Gilbert hill Road,Andheri (W))
MUMBAI 400 058.) .. PETITIONER

VERSUS

1. SHRI A. N. ROY)
(Commissioner of Police, Brihan)
Mumbai).)
2. THE STATE OF MAHARAHSTRA
3. THE SUPERINTENDENT)
Nasik Road Central Prison, Nasik) .. RESPONDENTS

Mr. U. N. Tripathi for petitioner

Mr. S. R. Patil, APP for Respondents

CORAM:- SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:- 14-9-2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

The petitioner is mother of one Anwar Farooque Ansari @ Anwar Butter @ Bakeriwala. She has challenged in this petition order dated 31st March, 2004, issued by the Commissioner of Police, Brihan Mumbai, under sub-section (2) of Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short) whereunder the said Anwar Farooque Ansari @ Anwar Butter @ Bakeriwala ("the detenu" for convenience) is detained with a view to prevneting him from acting in any manner prejudicial to the maintenance of public order. The order of detention, ground of detention, and material in support thereof were served on the detenu on 1.4.2004.

.2. The order of detention is based on one case being C. R. No. 320/2003 and two in-camera statements (1) dated 4.2.2004 and (2) dated 5.2.2004.

We have heard Mr.Tripathi, learned counsel for the ptitioner at some length.

3. Mr. Tripathi challenged the impugned order only on one ground. He contended that the order of detention is based on incidents which do not affect maintenance of public order. They merely affect law and order and, therefore, on this ground, the impugned order be set aside.

4. We are not at all impressed by this submission of Mr.Tripathi. We have carefully perused thegrounds of detention. The first incident took place on 18.10.2003. On 17.10.2003 one Mirmala Ratan Dhotre was returning home. At about 2200 hrs. she arrived at Rajhans Vidyalaya, Bhavans college compound, Munshi Nagar, Andheri (W), Mumbai. The detenu and his associates were drinking liquor near a coconut tree. When Nirmala saw the detenu and his associates, she started walking fast. The detenu went to her and caught hold of her hands. He outraged her modesty. When Nirmala shouted for help a watchman came forward to help her. The detenu released Nirmala. He went to the place where he was drinking liquor and returned with a knife. He threatened the watchman at the point of knife. The watchman was terrified and he left the place. The deternu and his associate continued to misbehave with Nirmala. Nirmala raised a hue and cry. Some members of the public heard her cries and rushed over there. The detenu then tried to run away on his motorbike. People gathered there. The detenu and his associates who were trying to run away were followed by the people. They were nabbed. The police arrived there. The police arrested them. C.R. No. 320/2003 came to be registered against the detenu and his associates under Sections 354, 341, 506 (II), 34 I.P.C. r/w Section 37(1)(a) r/w 135 of the Bombay Police Act. In our opinion, the manner of commission of this offence and the attendant circumstances clearly indicate that public order was affected thereby.

5. The detenu was released on bail in this case on 29.10.2003. Confidential enquiries were made into his criminal activities. It appears that on account of the reign of terror created by the detenu people were not coming forward to depose against him.

After giving the assurance that their names and identifying particulars would not be disclosed, statement of witnesses A and B came to be recorded on 4.2.2004 and 5.2.2004 respectively.

6. Witness A spoke about an incident which had taken place in the first week of December, 2003 when the detenu and his associate accosted him. They were carrying choppers. Witness A was lying supine and was repairing a Sumo motor jeep. The detenu kept the chopper on the neck of thewitness and asked him where he had kept his money. The associate of the detenu kept his foot on the genital of the witness. When the witness told him that he had not done any business on that day, the associate of the detenu applied more force on the genital of the witness. When the witness said he had no money he was released. The detenu then brandished chopper towards the passers by. The people who were witnessing this incident ran helter skelter and the residents closed their doors. Out of fear the witness did not lodge any complaint.

7. Witness "B" has deposed about an incident which had taken place in the third week of December, 2003. She was returning home from her relatives house. She went to a shop in the area to purchase bread and toasts for the breakfast of the next day. Outside the shop the detenu was sitting and drinking liquor. The detenu went near her and made obscene comments about her. Witness started walking briskly. The detenu then outraged her modesty. When the witness shouted for help passers by rushed over there. Thedetenu whipped out a chopper hidden behind his back and threatened members of the public. Out of fear they ran away. The detenu then asked the witness to

meet him alone. After brandishing the chopper the detenu left. Out of fear the witness did not lodge any complaint.

8. There is not the slightest doubt in our mind that both these incamera statements indicate that detenu's activities have created reign of terror in the concerned area. He has become a menace to the society. On account of his activities women have become apprehensive of their honour. Undoubtedly even tempo of the life of the society is disturbed. In **Arun Ghosh v. State of West Bengal, A.I.R. 1970 S.C. 1228,** the detenu was detained under the Preventive Detention Act. Some of the grounds of detention pertained to obscene teasing and harassment to women. In the affidavit in reply the District Magistrate had summarised the grounds as "anti-social activities including rioting, assault and undue harassment to respectable young ladies in the public street of Malda town". The Supreme Court considered whether those incidents could be said to be incidents affecting public order. The SupremeCourt observed that the act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His acts makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the prosecution agencies. This observation of the Supreme Court supports our view that the activities of the present detenu have disturbed the public order. This submission of the Mr. Tripathi must, therefore, fail. No other submissions were made by him. Hence the petition is dismissed.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)